

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TONY A. ADAMS,

Petitioner,

v.

**Civil Action No. 2:07 CV 67
(Maxwell)**

WARDEN at USP HAZELTON,

Respondent.

ORDER

On August 21, 2007, *pro se* Petitioner Tony A. Adams filed an Application for Habeas Corpus pursuant to 28 U.S.C. § 2241.

The case was referred to United States Magistrate Judge James E. Seibert for initial review and report and recommendation in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, United States Magistrate Judge James E. Seibert issued a Report And Recommendation on October 16, 2007, wherein he recommended that the Petitioner's Application for Habeas Corpus be denied, without prejudice to the Petitioner's right to file a Bivens action.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date they were served with a copy of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation. According to the docket in

the above-styled civil action, any objections to the Magistrate Judge's Report And Recommendation were required to be filed on or before October 30, 2007.

Thereafter, by Order entered December 4, 2007, the Court granted a Motion To Extend The Time For Petitioner's Objections filed by the Petitioner on October 29, 2007, and directed the Petitioner to file any desired objections to Magistrate Judge Seibert's October 16, 2007, Report And Recommendation on or before January 21, 2008. The Court's review of the docket in the above-styled civil action reveals that the Petitioner has not, to date, filed any objections to said Report And Recommendation. Accordingly, it would appear that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's October 16, 2007, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on October 16, 2007 (Docket No. 8), be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Application for Habeas Corpus pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED** without prejudice to the Petitioner's right to file a Bivens action.

It will be recalled that, in addition to seeking an extension of time in which to file

¹The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

objections to Magistrate Judge Seibert's Report And Recommendation, the Petitioner's October 29, 2007, filing also contained a Motion To Compel U.S.P. Lewisburg To Forward Property. In that regard, the Petitioner requested that the Court compel U.S.P. Lewisburg to forward his legal materials to him so that he might prepare his objections to Magistrate Judge Seibert's Report And Recommendation. In its December 4, 2007, Order granting the Petitioner's Motion To Extend The Time For Petitioner's Objections, the Court expressly provided that, in the event that the Petitioner had not received his legal materials in time to file any desired objections by January 21, 2008, he should file a Motion advising the Court of this fact and requesting an additional extension of time in which to file the same. The Court has not, to date, received any such Motion from the Defendant and must, for that reason, assume that the Petitioner did receive his legal materials. Accordingly, it is further

ORDERED that the Petitioner's Motion To Compel U.S.P. Lewisburg To Forward Property (Docket No. 10) be, and the same is hereby, **DENIED** as moot. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit. The Clerk of

Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: July 25, 2008

/S/ Robert E. Maxwell
United States District Judge